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SURFACE TRANSPORTATION BOARD

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SUITE 301  
WASHINGTON, D.C.

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OF COUNSEL  
URBAN A. LESTER

September 8, 2005

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Assignment and Assumption Agreement, dated as of August 31, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Assignor: GATX Rail Locomotive Group, LLC  
4 Embarcadero Center, Suite 2200  
San Francisco, California 94111

Assignee: CN Locomotive Leasing One, LLC  
c/o Cypress Equipment Management  
Corporation III  
Bayside Plaza  
188 The Embarcadero  
Suite 420  
San Francisco, California 94105

Mr. Vernon A. Williams  
September 8, 2005  
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A description of the railroad equipment covered by the enclosed document is:

34 locomotives within the following series as more particularly set forth in the equipment schedule attached to the document:

GATX 900 – GATX - 903  
GSCX 7350 – GSCX - 7376  
EMDX 6300 – EMDX - 6345  
LLPX 4403 – LLPX – 4406 (inclusive)

A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm  
Enclosures

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## ASSIGNMENT AND ASSUMPTION AGREEMENT SURFACE TRANSPORTATION BOARD

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**"), dated as of August 31, 2005 (the "**Effective Date**"), between GATX Rail Locomotive Group, L.L.C., a Delaware limited liability company ("**Assignor**"), and CN Locomotive Leasing One, LLC, a California limited liability company ("**Assignee**").

## RECITALS

1. Pursuant to a Purchase Agreement ("**Purchase Agreement**"), dated August 31, 2005, the parties hereto desire to effect (a) the transfer by Assignor to Assignee all of Assignor's right, title and interest in, to and under the Operative Agreements described in Schedule 1 hereto, together with the proceeds therefrom, and (b) the assumption by Assignee of the obligations of Assignor arising from and after the date hereof contained in the Operative Agreements, all with respect to the Model SD40-2 locomotives all as more particularly described on Schedule 2 attached hereto.

## AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. *Definitions.* For purposes of this Agreement, capitalized terms used herein but not otherwise defined herein shall have the meanings given to such term in the Purchase Agreement.

2. *Assignment.* For good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby irrevocably assign, transfer, sell and convey unto Assignee all of its right, title and interest in, to and under the Operative Agreements, together with the proceeds therefrom (the "**Assigned Documents**"), free and clear of all liens created by Assignor, provided, that Assignor hereby reserves and does not transfer its right, title and interest in any indemnities or liability insurance proceeds under or contemplated by the Assigned Documents in favor of the Assignor to the extent such indemnities or liability insurance proceeds were paid, accrued in favor of, relate to events occurring, or became payable to Assignor, prior to the date hereof.

3. *Assumption.* Assignee hereby assumes and agrees to be bound by all of the terms of, and agrees to undertake, all of the obligations, liabilities and duties of Assignor hereafter accruing or arising under the Assigned Documents. Assignee confirms that as of the Effective Date, it shall be deemed a party to the Assigned Documents, provided, however, that Assignee does not assume and Assignor shall remain obligated with respect to, and shall pay or perform when due, all obligations of Assignor under the Assigned Documents arising prior to the Effective Date hereof.

4. *Further Assurances.* Assignee and Assignor hereby covenant and agree to execute and to deliver from time to time such other documents and instruments and to take such

further action as may be reasonably requested in order to obtain the full benefits of this Agreement and of the rights and powers herein granted.

5. *Representations and Warranties of Assignor.*

5.1 *Organization; Authority.* Assignor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute, deliver and perform this Agreement and to perform its obligations under the Assigned Documents.

5.2 *Due Authorization, Execution and Delivery; Enforceability.* The execution, delivery and performance of this Agreement and the performance by Assignor of its obligations under the Assigned Documents have been duly authorized by all necessary action on the part of Assignor; this Agreement has been duly executed and delivered by Assignor and constitutes, and upon consummation of the transactions contemplated hereby, each of the Assigned Documents will constitute, the legal, valid and binding obligation of Assignor enforceable against Assignor in accordance with its terms except as such enforcement may be limited by the effects of applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability.

5.3 *No Violation.* The assumption and performance by Assignor of each Assigned Document is not in violation of its Articles of Organization or of any indenture, mortgage, contract or other agreement to which Assignor is a party or by which it is bound or of any order or judgment applicable to Assignor or any law, government rule or regulation of the United States or any state thereof applicable to its business generally and does not require the consent or approval of, or the giving of notice to, the registration with or the taking of any other action in respect of any governmental authority.

5.4 *No Litigation.* There is no litigation or proceeding pending or, to Assignor's knowledge, threatened against Assignor which would prohibit or materially frustrate the consummation by Assignor of the transactions contemplated by the Assigned Documents.

6. *Representations and Warranties of Assignee.* Assignee hereby represents and warrants as of the date of this Agreement that:

6.1 *Incorporation; Authority.* Assignee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California and has full corporate power and authority to execute, deliver and perform this Agreement.

6.2 *Due Authorization, Execution and Delivery; Enforceability.* The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Assignee; this Agreement has been duly executed and delivered by Assignee and constitutes the legal, valid and binding obligation of Assignee enforceable against Assignee in accordance with its terms except as such enforcement may be limited by the effects of applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability.

6.3 *No Violation.* The assumption and performance by Assignee of each Assigned Document is not in violation of its Articles of Incorporation or bylaws or of any indenture, mortgage, contract or other agreement to which Assignee is a party or by which it is bound or of any order or judgment applicable to Assignee or any law, government rule or regulation of the United States or any state thereof applicable to its business generally and does not require the consent or approval of, or the giving of notice to, the registration with or the taking of any other action in respect of any governmental authority.

6.4 *No Litigation.* There is no litigation or proceeding pending or, to Assignee's knowledge, threatened against Assignee which would prohibit or materially frustrate the consummation by Assignee of the transactions contemplated by the Assigned Documents.

7. *Governing Law.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the law of the State of California applicable to contracts executed and delivered, and to be fully performed in the State of California, with regard to its principles of conflicts of law which would cause the laws of another jurisdiction to apply.

8. *Counterparts.* This Agreement may be executed by the parties hereto in separate counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Agreement shall become effective as of the Effective Date.

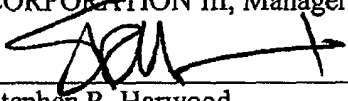
//Signatures appear on the following page//

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the Effective Date.

**ASSIGNEE:**

**CN LOCOMOTIVE LEASING ONE, LLC**

By: CYPRESS EQUIPMENT MANAGEMENT  
CORPORATION III, Manager

By:   
Name: Stephen R. Harwood  
Title: President

**ASSIGNOR:**

**GATX RAIL LOCOMOTIVE GROUP, L.L.C.**

By: \_\_\_\_\_  
Name: Eileen Raphael  
Title: Vice President

[Signature Page to Assignment and Assumption Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the Effective Date.

**ASSIGNEE:**


**CN LOCOMOTIVE LEASING ONE, LLC**

By: CYPRESS EQUIPMENT MANAGEMENT  
CORPORATION III, Manager

By: \_\_\_\_\_  
Name: Stephen R. Harwood  
Title: President

**ASSIGNOR:**

**GATX RAIL LOCOMOTIVE GROUP, L.L.C.**

By:   
Name: Eileen Raphael  
Title: Vice President

[Signature Page to Assignment and Assumption Agreement]

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of August, 2005, before me \_\_\_\_\_, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me, (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

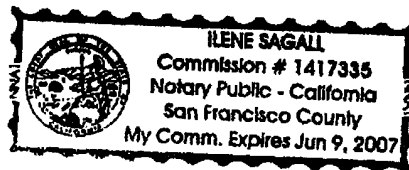
STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF SAN FRANCISCO )

On this 31st day of August, 2005, before me ILENE SAGALL, a Notary Public in and for the State of California, personally appeared STEPHEN R. HARWOOD, personally known to me, (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed instrument.

WITNESS my hand and official seal.

Ilene Sagall  
NOTARY PUBLIC

My commission expires: June 9, 2007





State of California

)

) ss.

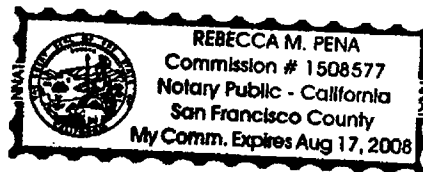
County of San Francisco

)

On 31<sup>st</sup> August, 2005 before me, Rebecca M. Pena, Notary Public, personally appeared Eileen Raphael, personally know to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS, my hand and official seal.

*Rebecca M. Pena*



## **SCHEDULE 1 TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT**

### **OPERATIVE DOCUMENTS**

1. Certified copy of Locomotive Master Operating Lease Agreement dated as of December 6, 1996 ("Master Lease") between Union Pacific Railroad Company, as lessee ("Lessee") and Locomotive Leasing Partners, L.L.C., a Delaware limited liability company, now known as GATX Rail Locomotive Group, L.L.C. ("Assignor").
2. Supplement No. 20, dated as of January 15, 2004, as amended by (i) Amendment No. 1 to Supplement No. 20, dated as of July 29, 2004, and (ii) Amendment No. 2 to Supplement No. 20, dated as of July 1, 2005, to the Master Lease (collectively with the Master Lease, the "Lease").
3. December 13, 1996 letter from Assignor to Lessee.
4. Lessee's written notice (via email) to Assignor, dated August 4, 2005, exercising Lessee's option to renew the Term of the Lease from September 1, 2005 to and including November 30, 2005.

## SCHEDULE 2 TO ASSIGNMENT AND ASSUMPTION AGREEMENT

### DESCRIPTION OF THE LOCOMOTIVES

	<u>Model</u>	<u>Road &amp; Number</u>	<u>Build Date</u>
1	SD40-2	GSCX 7350	June 1974
2	SD40-2	GSCX 7351	June 1974
3	SD40-2	GSCX 7352	June 1974
4	SD40-2	GSCX 7353	June 1974
5	SD40-2	GSCS 7356	June 1974
6	SD40-2	GSCX 7357	June 1974
7	SD40-2	GSCX 7360	March 1975
8	SD40-2	GSCX 7361	March 1975
9	SD40-2	GSCX 7364	March 1975
10	SD40-2	GSCX 7366	March 1975
11	SD40-2	GSCX 7367	March 1975
12	SD40-2	GSCX 7368	March 1975
13	SD40-2	GSCX 7370	March 1975
14	SD40-2	GSCX 7371	March 1975
15	SD40-2	GSCX 7372	March 1975
16	SD40-2	GSCX 7373	March 1975
17	SD40-2	GSCX 7374	March 1975
18	SD40-2	GSCX 7376	March 1975
19	SD40-2	LLPX 4403	March 1975
20	SD40-2	LLPX 4404	March 1975
21	SD40-2	LLPX 4405	March 1975
22	SD40-2	LLPX 4406	March 1975
23	SD40-2	GATX 900	July 1976
24	SD40-2	GATX 901	July 1976
25	SD40-2	GATX 903	July 1976
26	SD40-2	EMDX 6300	July 1973
27	SD40-2	EMDX 6301	July 1973
28	SD40-2	EMDX 6302	July 1973
29	SD40-2	EMDX 6303	July 1973
30	SD40-2	EMDX 6304	July 1973
31	SD40-2	EMDX 6305	July 1973
32	SD40-2	EMDX 6309	July 1973
33	SD40-2	EMDX 6311	July 1973
34	SD40-2	EMDX 6345	July 1973

## BILL OF SALE

For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GATX Rail Locomotive Group, L.L.C., a Delaware limited liability company ("**Seller**") does hereby sell, assign and transfer unto CN Locomotive Leasing One, LLC ("**Purchaser**"), its successors and assigns, all of Seller's all right, title and interest in and to the Locomotives described on Schedule 1 hereto (the "**Locomotives**").

Seller hereby warrants that it has good and valid title to the Locomotives, free and clear of any of any claims, liens, security interests, pledges, hypothecations and encumbrances of any kind or nature created by Seller ("**Liens**"), excepting only the rights of the Lessee under the Lease and the liens and charges specifically permitted under the Lease. This Bill of Sale is being delivered in connection with the Purchase Agreement ("**Purchase Agreement**") dated as of even date herewith between Purchaser and Seller. Capitalized terms used herein shall have the respective meanings set forth in the Purchase Agreement.

EXCEPT FOR THE WARRANTY OF TITLE SET FORTH IN THIS BILL OF SALE AND IN THE PURCHASE AGREEMENT, THE SALE OF THE LOCOMOTIVES HEREUNDER IS BEING MADE ON AN "AS IS" AND "WHERE IS" BASIS. EXCEPT AS SET FORTH IN THE PURCHASE AGREEMENT, SELLER SHALL NOT BE DEEMED TO HAVE MADE AND DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, NOW OR HEREAFTER, AS TO THE CONDITION, DESIGN, OPERATION, MAINTENANCE, VALUE, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR USE OR FOR A PARTICULAR PURPOSE OF THE LOCOMOTIVES OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE LOCOMOTIVES OR AS TO THE FREEDOM OF THE LOCOMOTIVES FROM ANY LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), OR ANY OTHER REPRESENTATION OR WARRANTY, WHATSOEVER, EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE LOCOMOTIVES OR ANY PART THEREOF AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, DEALING OR USAGE OF THE TRADE.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the 31st day of August, 2005.

**GATX RAIL LOCOMOTIVE GROUP,  
L.L.C.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 1 TO BILL OF SALE

### DESCRIPTION OF THE LOCOMOTIVES

	<u>Model</u>	<u>Road &amp; Number</u>	<u>Build Date</u>
1	SD40-2	GSCX 7350	June 1974
2	SD40-2	GSCX 7351	June 1974
3	SD40-2	GSCX 7352	June 1974
4	SD40-2	GSCX 7353	June 1974
5	SD40-2	GSCS 7356	June 1974
6	SD40-2	GSCX 7357	June 1974
7	SD40-2	GSCX 7360	March 1975
8	SD40-2	GSCX 7361	March 1975
9	SD40-2	GSCX 7364	March 1975
10	SD40-2	GSCX 7366	March 1975
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17	SD40-2	GSCX 7374	March 1975
18	SD40-2	GSCX 7376	March 1975
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31	SD40-2	EMDX 6305	July 1973
32	SD40-2	EMDX 6309	July 1973
33	SD40-2	EMDX 6311	July 1973
34	SD40-2	EMDX 6345	July 1973

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: September 8, 2005



Robert W. Alvord